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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

THE PROIMMUNE COMPANY, LLC, a  
Delaware limited liability company;

Plaintiff,

v.

HOLISTA COLLTECH LTD., an Australian  
corporation; and DOES 1-50, inclusive;

Defendants.

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AND RELATED COUNTERCLAIMS.

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Case No.: 7:20-cv-01247-KMK

**PLAINTIFF THE PROIMMUNE  
COMPANY, LLC'S NOTICE OF  
PROPOSED JUDGMENT AND  
REQUEST FOR PREJUDGMENT  
INTEREST AND DISMISSAL OF  
THIRD CAUSE OF ACTION**

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT** Plaintiff The ProImmune Company, LLC submits the following Proposed Judgment as directed by the Court pursuant to its memo endorsed order entered on March 21, 2023. (ECF 104.) ProImmune's Proposed Judgment is submitted as **Exhibit A.**<sup>1</sup>

On February 12, 2020, ProImmune filed its complaint in this matter, alleging four claims for breach of contract pursuant to four separate agreements that were entered into between ProImmune and Defendant/Counter-Plaintiff Holista Colltech Ltd. (*See generally* ECF 1.) On June 14, 2021, ProImmune moved for summary judgment as to its first, second, and fourth causes of action for breach of contract (among other aspects of its motion that are not pertinent here). (ECF 48.) On March 21, 2022, the Court granted ProImmune's motion for summary judgment. (ECF 85.) The Court also requested further briefing on two issues, which the parties submitted, and the Court affirmed its ruling on summary judgment on January 30, 2023. (ECF 96.)

By prevailing on its claims for breach of contract, ProImmune contends that it is entitled to prejudgment interest for those claims. "Under New York law, which the Agreement provided was to control, a plaintiff who prevails on a claim for breach of contract is entitled to prejudgment interest as a matter of right. *See* N.Y.C.P.L.R. §§ 5001, 5002 (McKinney 1963); *Bulk Oil (U.S.A.), Inc. v. Sun Oil Trading Co.*, 697 F.2d 481, 484–85 (2d Cir.1983); *Lee v. Joseph E. Seagram & Sons, Inc.*, 592 F.2d 39, 41 (2d Cir.1979)." *U.S. Naval Inst. v. Charter*

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<sup>1</sup> The parties could not agree on the issue of pre-judgment interest. ProImmune believes that it is entitled to pre-judgment interest with its judgment for the reasons stated in this notice. Holista indicated that it would rather have the issue briefed by the parties concurrently with ProImmune's Motion for Attorney's Fees. Accordingly, the parties are submitting separate proposed judgments.

*Commc'ns, Inc.*, 936 F.2d 692, 698 (2d Cir. 1991). Prejudgment interest is to be computed from the earliest ascertainable date the cause of action existed. N.Y.C.P.L.R. § 5001(b). Prejudgment interest accrues at a rate of nine percent (9%) per annum. N.Y.C.P.L.R. § 5004(a). ProImmune concurrently submits with its Proposed Judgment the Declaration of Kete P. Barnes, which sets forth the date of breach and calculation of interest for each contract at issue.

Additionally, pursuant to FRCP 41(a)(2), ProImmune respectfully requests the Court dismiss with prejudice its third cause of action for breach of contract. “Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” *Ibid.* “A voluntary dismissal without prejudice under Rule 41(a)(2) will be allowed ‘if the defendant will not be prejudiced thereby.’” *D’Alto v. Dahon California, Inc.*, 100 F.3d 281, 283 (2d Cir. 1996). ProImmune is requesting that the Court dismiss its third cause of action *with prejudice*. Holista cannot be prejudiced by having a cause of action against it dismissed, and further, has agreed that the claim should be dismissed. (ECF 103 at p.2.)

ProImmune respectfully requests the Court enter Judgment, award prejudgment interest for the claims that it succeeded on, and dismiss its third claim for breach of contract with prejudice.

Dated: March 24, 2023

**BROWN NERI SMITH & KHAN, LLP**

By: /s/ Ryan B. Abbott  
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